

In the U.S. District Court of Oregon

Benjamin Barber
Jay David Leatherwood
Andrew Guy Moret
Worth Briggs
Norbert Ileisi
Chad Dykehouse
vs

Case no 18-cv-00855-AC
Amended Complaint
Class Action

Oregon, Oregon Attorney General,
Alabama, Alabama Attorney General,
Arkansas, Arkansas Attorney General,
California, California Attorney General,
Colorado, Colorado Attorney General,
Conneticut, Conneticut Attorney General
District of Columbia, District of Columbia Attorney General
Florida, Florida Attorney General,
Georgia, Georgia Attorney General,
Illinois, Illinois Attorney General
Louisiana, Louisiana Attorney General,
Maine, Maine Attorney General,
Minnesota, Minnesota Attorney General,
Nevada, Nevada Attorney General,
New Hampshire, New Hampshire Attorney General,
New Mexico, New Mexico Attorney General,
North Carolina, North Carolina Attorney General,
North Dakota, North Dakota Attorney General,
Oklahoma, Oklahoma Attorney General,
Pennslyvania, Pennslyvania Attorney General,

Tennessee, Tennessee Attorney General,
Texas, Texas Attorney General,
Utah, Utah Attorney General,
Vermont, Vermont Attorney General,
Virginia, Virginia Attorney General,
Washington, Washington Attorney General,
West Virginia, West Virginia Attorney General,
Wisconsin, Wisconsin Attorney General.

Defendants

Introduction

This is a lawsuit challenging the Constitutionality of state statutes, and the unlawful arrest and imprisonment of individuals charged under these laws, and the retaliation for exercise of the protected rights of the individuals, and a preenforcement injunction which protects the rights of ordinary firmness which are chilled by the actions of the defendants.

The states attempted to thwart the first Amendment to the U.S Constitution by attempting to create other rights. For example the "right to be [not] offended" or the freedom from "embarrassment, humiliation" and the "right to be forgotten" or creating an expectation of "privacy" where none exists or by conflating "privacy" eg "intrusion upon seclusion" with "right to control ones name or likeness" aka "publicity", and by saying "were not talking about the content of the images, the dissemination it self is the focus" of the law.

In doing so the defendants neither remedied the first amendment Constitutionality of the statute, but also violated sections of the Copyright act and the Communications Decency Act, which also prohibit the sort of rights the state sought to convey to persons, and the Communications media that they the state is prohibited from regulating. In addition to being unconstitutional as applied in a variety of contexts as well.

Jurisdiction

The Court has jurisdiction over the plaintiffs claims under 42 USC 1331(i) and 42 USC 1343 for violations of federal Constitutional rights

The court has exclusive subject matter jurisdiction for all claims for relief arising under Copyright under 28 USC 1338(a)

The Court has supplemental jurisdiction over the Plaintiff's state law tort claims under 28 USC 1367

The Court has power to remove state court claims for relief under 28 USC 1454 and the doctrine of complete preemption as provided by 17 USC 301

The Court has power to provide injunctions against any officers of a state or the state itself under 17 USC 511(c) by Article I § 8 cl 2, Article VI, Amendment 14

Parties

The plaintiff Benjamin Barber is a limited public figure prior to incarceration at Washington County jail. He is incarcerated by virtue of ORS 163.472, after his ex wife signed an agreement allowing him to provide access to their social interactions, and had herself shared the videos on Google Hangouts for the purpose of blackmail. Barber is the copyright owner of AlbiNoPn Reg # Vau-001282435, has satirically made a 'Revenge Porn Simulator' out of the open source game Quake 3 Arena, and patented 'biometric generation of intimate images', which was turned into the "Fake app" by Reddit.Com Users. Barber was employed as a software/cloud systems engineer and ran a nonprofit 'Nerd Party' dedicated to open source software and open society and government. Barber is known to the public for his involvement in the American's Elect political party, running for Oregon House district 36, and Antiracism and sexism activism.

The plaintiff Jay David Leatherwood is incarcerated by virtue of ORS 163.472 at Washington County Jail after his ex girlfriend posted a picture of him nude on facebook so people could "see his small penis", and to which he responded by posting her images in the comments, after he got into a text messaging argument where he told her he would do so if she didn't stop and she said "go ahead". Leatherwood received the images from his ex-girlfriend by means of an information content provider on his phone.

Worth M Briggs is incarcerated at Coffee Creek Correctional Institute. He has in the past been a member of the website Fetlife, which he has posted intimate images of himself and others as a part of his sexual lifestyle and gender expression. He is not incarcerated by ORS 163.472 but fears he will be incarcerated by the law by virtue of previous enforcement by the State of Oregon.

Andrew Guy Moret was incarcerated at Washington County Jail, but his whereabouts are unknown to Barber. He and Barber were the original authors of the Complaint, and Barber informed this Court in a motion to reconsider they would file suit together, after which Washington County jail confiscated a joint petition in his cell, and then transferred Andrew Moret, and prevented any means - even by third parties - of sending him the prior Complaint. Andrew Moret previously was the founder of the "Civil Authority" club at PCC which was focused on protection of civil liberties. MR Moret has a commercial license to sell the work entitled Albino Porn which he planned to sell.

Washington County Jail. MR

Norbert Ileisi was previously incarcerated at the Washington County jail, he along with Barber are members of the free speech web sites Reddit and 4Chan. Norbert has a Commercial licence to the work albino Porn which he plans on making into funny memes (image macro)

Chad Dykehouse is incarcerated in Washington County jail not by virtue of ORS 163.472, and is licensed to commercially use the work "albino Porn" which he would like to use to sell Albino Porn bumper stickers on ebay

Other potential Claimants include:

~~Governor Eric Greitens who was charged with a similar statute in Missouri, until the charges were dismissed after my appearance as Amicus Curiae~~

Members of the Anonymous image board 4chan known as Burg (Pennsylvania), Sam (Arkansas), Sherman (California), "Undead" (Texas), "Octopus" (Oklahoma), Liam (Florida), Grille (Louisiana), Heidrich (West Virginia) who Congregate on a Russian voice channel for activism

Professor John Barber of the department of New Media at the University of Washington - Vancouver, who operates the Bratigan Library and offered to upload a digital version of the copyrighted Albino Porn to the library when I asked him.

Members of the Reddit group "fakedeep" who used the fake app to make fake porn using the biometric generation of intimate images patent, who are normally anonymous but could be held criminally liable for creating satirical fake Porn of famous politicians and celebrities

the state Attorney Generals will be asked in discovery to produce names of other plaintiffs, and the defendants who caused false arrest or imprisonment by virtue of the unconstitutional statutes by the state statutes.

The states of Oregon, Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Louisiana, Maine, Minnesota, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Texas, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin are sued as individuals under 17 USC § 511(c) and also in the official capacity by members of the Class or plaintiffs 17 USC § 511(c) was authorized by Congress with a clear statement waiving their 11th amendment immunity or any doctrine of sovereign immunity. This is a lawful exercise of Congressional power under the due process clause of the 14th amendment, to prevent one's intellectual property under treaties enforced by Article VI from being taken by States, in violation of the Commerce powers of Article I § 8 Cl 2.

The Attorney Generals for Oregon, Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Louisiana, Maine, Minnesota, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin are sued in their individual and official capacities for being deliberately indifferent or negligent of plaintiffs rights.

UnConstitutional Statutes

Alabama: Distributing a private image SB301 Amended

Alabama Code § 15-20A-4 to 15-20A-43

Arkansas: Unlawful distribution of sexual images or recordings Arkansas Code § 5-26-314

California: intentional distribution of an intimate image

California Penal Code § 647(j)(4)

Colorado: Posting a private image for harassment Colorado revised statute § 18-7-107, 18-7-108

Connecticut: unlawful dissemination of an intimate image

Connecticut General statute § 53a-189C

District of Columbia: unlawful disclosure D.C. Code § 22-3052

Criminalization of non consensual pornography D.C. law § 20-275

Florida: Sexual cyber harassment Florida statute § 784.049

Georgia: Prohibition on nude or sexually explicit electronic transmissions Georgia Code § 16-11-90

Illinois: Non-consensual dissemination of private sexual images 720 Illinois Comp Statute 5/11-23.5 Criminal Code § 11-23.5

Louisiana: Non disclosure of intimate images Louisiana revised statutes § 14:283.2

Maine: Unauthorized dissemination of certain private images

Maine revised statute title 17-A § 511-A

Minnesota: NonConsensual dissemination of private sexual images Minnesota statute § 617.261

Nevada: Unlawful dissemination of an intimate image

Nevada revised statute § 200.780-785, Ch 200 § 2-6

New Hampshire: Non-consensual dissemination of private

Sexual images New Hampshire revised statute § 644:9-a

New Mexico: Unauthorized distribution of sensitive images New Mexico Statute § 30.37A-1

North Carolina: Disclosure of private images North Carolina General Statute § 14-190.5A

North Dakota: Distribution of intimate images North Dakota Century Code § 12.1-17-07.2

Oklahoma: Non Consensual dissemination of sexual images Title 21 § 1040.13(b)

Oregon: Unlawful dissemination of intimate images Oregon revised statutes § 163.472

Pennsylvania: Unlawful dissemination of intimate images Pennsylvania Consolidated statute title 18 § 3131

Tennessee: Unlawful exposure Tennessee Code § 39-17-318

Texas: Unlawful disclosure or promotion of intimate visual material Texas penal Code § 21.16

Utah: Distribution of intimate images Utah Code § 76-5b-203

Vermont: Unlawful dissemination of sexually explicit images Vermont statute authority title 13 § 2606

Virginia: Unlawful dissemination or sale of images of another person Virginia Code § 18.2-386.2

Washington: Distribution of intimate images RCW § 4.24.795
Disclosing intimate images RCW § 9A.86.010

West Virginia: Non Consensual disclosure of private images § 61-8-28a west Virginia Code

Wisconsin: Representations depicting nudity Wisconsin Statute § 942.09

Content based restrictions on speech

All of the defendants are engaged in content based restrictions of speech meriting strict scrutiny.

Copyright Preemption

All of the defendants have statutes which are preempted by 17 USC §301, and violate 17 USC §201.

Cyberspace law Preemption

All of the defendants have statutes which do not exclude users who post from another information content provider and violate 47 USC §301

View Point Restrictions on Speech

The following states unlawfully restrict speech based on favoritism of viewpoint in addition to the content:

AR, CA, CO, DC, FL, GA, LA, ME, MN, NC, NH, NV, OK, PA, TN, VT, UT, VA, WI

Prior Restraint of speech by Persons

The following states have unlawfully allowed prior restraints on speech by private parties:

CO, CT, DC, FL, IL, LA, ME, MN, NC, ND, NH, NM, NV, OR, TX, UT, VA, VT, WA, WI

6th Amendment District Clause

The following states prosecute crimes outside of their state: FL, GA, MI, OR, PA, VA

Emotional Distress

The following states criminally punish speech on the basis that solely causes emotional harm, in violation of the first Amendment:

AR, CO, DC, GA, IL, LA, ME, MN, NC, ND, NH, OK, OR, PA, TN, TX, UT, VA, WA, WI

Overbroad Law

The following states unlawfully include speech not applicable, like paintings, or pictures of beach goers wearing a bikini, or milking a cow:

AR, CO, DC, GA, IL, LA, ME, MN, NC, ND, NH, OK, OR, PA, TN, TX, UT, VA, WA, WI

Duplicative Law

The following states unlawfully use language like "intend to harass, coerce, intimidate", where using an image is the means and not the ends, which is already provided by a harassment, coercion statute

AR, FL, GA, LA, ME, MN, NC, NH, NM, NV, OK, PA, TX, VT, VA

Burden Shifting/ Negligence guilt standard

The following states use a "reasonable person" or "reasonably should have known" or "understood" or had a "reasonable expectation" to form guilty mind.:

CO, CT, FL, IL, LA, ME, MN, NC, NH, OK, OR, TX, VA, WA.

Criminal Copyright infringement

The following states violate 17 USC 506/18 USC 2319 on the face of the statute, by allowing a non Copyright holder to retain a right of authorship, or obtains money for a person who exercises their rights under Copyright.:
CO, MN, NC, VT

Void for Vagueness ^{impelling interest}

The following states have made laws that are unconstitutionally vague, and a person could be charged for taking photos at a beach or a petting zoo or catches a person cheating with a home security system and shows their partner:
AK, CA, CT, GA, IL, LA, ME, MN, NV, NH, NM, ND, OK, OR, PA, TX, UT, VT, VA, WA, WI.

Legitimate / Lawful - Purpose / Value

These states ambiguously use phrases as "legitimate public interest" or "legitimate medical, scientific, educational value" or "lawful purpose", but are vague. Under the 1st amendment this is not a proper Community, or jury or legal standard, and under Copyright the entire purpose is the public benefit from the creative work of the author. The benefit can be any myriad of viewpoints judged by a person, not by the government or even a jury.:
FL, GA, IL, MN, NC, NH, NM, NV, OR, CO, ME.

Ex Post facto / Contract Impairment

The following states use the language "does not Consent" rather than "did not Consent", which if there was an agreement would impair it, and would render unlawful what may have been lawful when committed:
AR, MN, NM, NC, OR, TX, WI

For More Information: Take Judicial Notice of Memorandum in support of the Amended Complaint.

Claims for Relief

The defendants have violated 18 USC § 241, 242 by infringing unlawfully on the rights of the plaintiffs, specifically their first amendment and copy rights.

The statutes the defendants use are completely preempted by 17 USC § 301 and all cases and judgements should be removed to federal court.

The statutes the defendants use are preempted by 47 USC § 301 since they do not immunize users who provide images from another "information content provider".

Defendants have violated 17 USC § 201(c) by involuntarily transferring rights from a copyright owner, who has the exclusive right to consent to use of the work.

Defendants have created equivalent rights to ones under Copyright 17 USC § 106, 502, 506, 512

Even when images are used by a non Copyright holder, many are entitled to a defense of fair use.

Thus, Defendants conceived of a scheme or artifice to deprive plaintiffs of honest services, by attempting to avoid 1st amendment protections, by granting rights equivalent to Copyright to punish Copyright holders criminally for the exercise of their rights.

In Furtherance of this scheme the defendants used the articles and writing by mail and wire, with false or fraudulent, pretenses or representations, threats to injure the reputation or property interests of the defendants in violation of 18 USC 875, 1341, 1343, 1346

The scheme was accompanied by threats of violence under 18 USC 816, and were used to obstruct intellectual property in interstate by force and under color of official right, which would ordinarily adversely affect the employer or business relations of plaintiffs

The scheme involved 10 or more Copyrighted images with a value of \$1000 or more, and attempted to obtain the rights of Copyright transferred involuntarily, and provide financial gain in the form of civil compensation and penalties in violation of 18 USC 2319 / 17 USC 506

Having done so the defendants were racketeering and the defendants seek civil relief under 18 USC 1964.

Relief Requested

Declaratory Judgement

- A That the defendants did unlawfully retaliate against the plaintiffs for the lawful exercise of speech
- B That the defendants did create rights equivalent to copyright under 17 USC § 301
- C That the defendants did create a law preempted by the Communications decency act 47 USC § 230
- D That the defendants did involuntarily transfer rights given under Copyright violating 17 USC 201
- E That the rights the defendants created are equivalent to 17 USC § 106, 502, 506, 512 or fair use.
- F That the defendants deprived the plaintiffs of the intangible right of honest services
- G That the defendants did use or employ an artifice or scheme to deprive plaintiffs of their rights under the Copyright act by mail or wire to injure the defendants reputation or property interests in violation of the law
- H The scheme was accompanied by threats of violence which are typical of arrest and incarceration, under the color of official right, and which would ordinarily affect the employer or business relations of the defendant

- I That the Scheme amounted to Racketeering
- J That no 11th amend ment or other doctrine of sovereign immunity exists such as Comity, Res Judicata, Collateral estoppel for the states or defendants pursuant to 17 USC § 511
- K That 17 USC § 511 is a valid exercise of Congressional power under Article VI treaty clause, Amendment 5, 14 taking clause, and the Article I § 8 cl 2 Commerce clause.

Injunctive Relief

- A A preliminary injunction ordering the defendants not to prosecute any person with the offending Statutes, Converting into a permanent injunction
- B An injunction ordering the expungement of any conviction made as a result of the statute
- C An injunction ordering the release of any prisoners incarcerated solely by virtue of charges from the unconstitutional statutes.
- D Where such injunctions are necessary in aid of exclusive subject matter jurisdiction of the federal courts for claims for relief based on copyright, and made pursuant to 17 USC § 502, 511 and 18 USC § 1964.
- E Any other injunctions which may be necessary to enforce the federal rights as may be needed by the court.

Compensatory Damages

- A Award Compensatory damages for false arrest and imprisonment of the defendants by plaintiffs
- B Award Compensatory damages for past and future earnings suffered by plaintiffs from defendants
- C Award Compensatory damages for any physical, financial, emotional injury from the false arrest and imprisonment
- D Award any damages for violation of Copyrights.
- E Award nominal and punitive damages against the defendants for the chilled speech, regardless if enforced or not by defendants for speech made or not made by the plaintiffs.
- F Award trebled damages for the acts of racketeering by the defendants against any plaintiffs it applies.
- G Grant such other relief as it may appear the plaintiff is entitled by equity or law.


Date 05-29-18


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